

**PROPOSED AGREEMENT  
ON  
SAN JOAQUIN RIVER  
PROTECTION**

**EXPANDING THE CONSENSUS PROCESS  
MAY 1996**

The following is a list of the parties supporting this proposal to resolve environmental protection issues on the mainstem San Joaquin River.

### SAN JOAQUIN RIVER INTERESTS



#### **San Joaquin Tributaries Association**

- Modesto Irrigation District
- Merced Irrigation District
- Turlock Irrigation District
- Oakdale Irrigation District
- South San Joaquin Irrigation District



#### **San Joaquin River Exchange Contractors Water Authority**

- San Luis Canal
- Firebaugh Canal
- Central California I.D.
- Columbia Canal



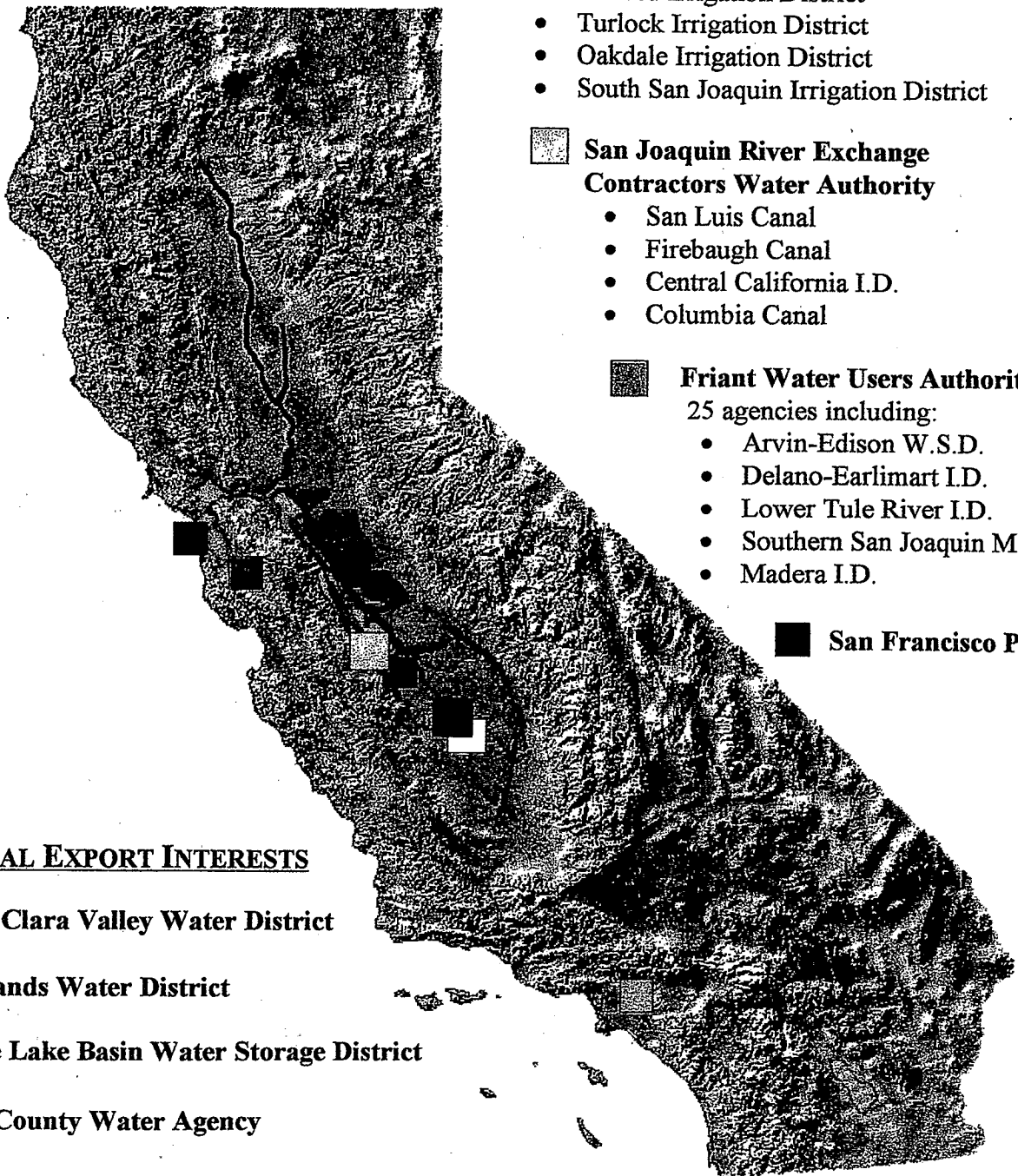
#### **Friant Water Users Authority**

25 agencies including:

- Arvin-Edison W.S.D.
- Delano-Earlimart I.D.
- Lower Tule River I.D.
- Southern San Joaquin M.U.D.
- Madera I.D.



#### **San Francisco P.U.C.**



### STATE/FEDERAL EXPORT INTERESTS



**Santa Clara Valley Water District**



**Westlands Water District**



**Tulare Lake Basin Water Storage District**



**Kern County Water Agency**



**Metropolitan Water District of Southern California**



**San Luis Delta-Mendota Water Authority**

31 member agencies

# Executive Summary

Over the past year, a group of major agricultural and urban water interests have been discussing methods by which to implement environmental improvements for fishery and other natural resources in the San Joaquin Basin. These discussions were prompted by an agreement reached on environmental protection measures in the Bay-Delta Estuary in 1994 (1994 Accord) that only partially addressed the overall needs of the San Joaquin River. San Joaquin River issues were a stumbling block in the eventual achievement of consensus on the 1994 Accord primarily because of inadequate scientific information and a lack of representation of San Joaquin River interests in the negotiations.

Within the objectives set forth by the 1994 Accord, only the U.S. Bureau of Reclamation (USBR) with its operations at New Melones Reservoir was required to meet flows on the mainstem San Joaquin River at Vernalis. The 1994 Accord stated these were interim flows to be reevaluated (up or down) within the next three years on the basis of better scientific information. It was recognized that New Melones Reservoir alone would not be sufficient to meet the water quality objectives in the 1994 Accord.

These discussions have resulted in the following proposal that provides flow and non-flow habitat improvements to the San Joaquin River. The actions under this Proposal, in combination with other current State, federal, and local habitat restoration programs, are expected to provide the necessary building blocks toward San Joaquin River environmental protection. The following is a summary of the Proposal's key benefits.

- **Provides Improved Flow and Non-Flow Measures Beyond Benefits Possible within the Terms of the 1994 Bay-Delta Accord.** These proposed additional flows, in combination with export limits contained in the State Water Resources Control Board (State Board) 1995 Water Quality Control Plan (1995 WQCP), new habitat improvements, monitoring, and completion of the Old River fish/flow directional barrier project, will significantly improve overall habitat and transport conditions for salmon and other species in the San Joaquin River and Bay-Delta.
- **Halts Divisive Litigation — Expands Basis for Consensus.** Because of concerns about the scientific and legal basis of the San Joaquin River provisions in the 1994 Accord, the San Joaquin Tributaries Association filed litigation in June 1995 challenging the 1995 WQCP. Whether State regulations can require other San Joaquin agencies to release flows to meet the standard is a complex and contentious legal issue, and the subject of current litigation. Rather than spending years litigating the validity of the 1995 WQCP and the allocation of flow responsibility, while failing in the interim to provide adequate environmental protection for the San Joaquin River and Bay-Delta, the parties could implement this Proposal *now*. If the litigation continues, it will likely direct attention and resources away from solving the long-term Bay-Delta water management problems and could void the existing flow requirements.
- **Provides Immediate & Voluntary Environmental Improvements.** Upstream agencies on the San Joaquin River were not signatories to the

## OUTLINE

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- III. The Proposal
- IV. Technical Foundation
- V. Questions & Answers
- VI. Letters & Media

# Executive Summary

1994 Accord, nor have they ever been required to meet San Joaquin River flow requirements under previous State Board Bay-Delta decisions. By voluntarily agreeing to provide additional flow to meet the San Joaquin River standard, these agencies are cooperatively working toward implementing immediate environmental improvements in the Bay-Delta.

- **Enhances Prospects for Resolving Long-Term Environmental and Water-Supply Issues — Consistent with the Letter and Spirit of the 1994 Accord.** This Proposal furthers the consensus model of the 1994 Accord by committing seven major San Joaquin River entities to protecting the fishery resources of the Bay-Delta Estuary. Furthermore, if accepted by the State Board after their hearing process, this Proposal would enhance prospects for resolving overall Bay-Delta environmental and water-supply issues -- the goal of both the 1994 Accord and the ongoing CALFED process for developing a long-term Bay-Delta management plan. This Proposal does not represent an "end" to issues on the San Joaquin River and Bay-Delta. Rather, it symbolizes the beginning of a new consensus-based, problem solving approach to resolving decades-old Bay-Delta problems.
- **Does Not Preclude Obtaining Additional Flows.** Additional flows could be available from these and other San Joaquin River users who are not parties to the Proposal. Depending on supply conditions, these flows could be purchased through the Central Valley Project Improvement Act Restoration Fund and other environmental funds on a willing-seller basis.
- **Provides Additional Consensus-Building Meetings Outside the State Board Regulatory Hearings.** The proponents of this Proposal plan to hold open meetings to discuss relevant biological and hydrological issues with all interested parties. Furthermore, separate regulatory hearings by the State Board will provide an additional opportunity for parties to air their views prior to official action on this Proposal.
- **Supports an Improved Environmental Monitoring Program.** A number of factors influence spawning success and survival of juvenile salmon, including instream flows, water quality, water temperature, suitable spawning gravels, predation, tidal action, etc. However, the significance of these is difficult to determine with the limited data available. Under the Proposal, monitoring will be funded and implemented to: (1) permit identification of factors influencing spawning success; (2) verify whether measures taken to remedy these factors are working; and (3) allow for future triennial reviews to be based on more complete biological information.
- **Continues Support for Implementing Non-Flow Elements in the 1994 Accord.** The Proposal emphasizes the construction of an operable fish/flow directional barrier at the head of Old River as well as other non-flow habitat improvements outlined in the 1994 Accord.



**1994 Bay-Delta Accord.** On December 15, 1994, Governor Pete Wilson and Cabinet-level federal officials announced the signing of a historic Accord on Bay-Delta environmental protection. Declaring "a major victory of consensus over confrontation," the Governor, Secretary of the Interior Bruce Babbitt, and U.S. Environmental Protection Agency Administrator Carol Browner unveiled the Accord which was supported by a range of environmental organizations, business groups, and urban and agricultural water agencies from throughout California.

The region protected by the 1994 Accord's measures includes the Bay-Delta Estuary, the Sacramento River, and the San Joaquin River.

The intent of the 1994 Accord and the subsequent 1995 WQCP was to allow for near-term changes in the operations of the federal Central Valley Project (CVP), and the State Water Project in order to better protect the environment. The 1994 Accord specified three categories of protective actions:

- Category I: Control of freshwater flow to improve estuarine conditions in the shallow-water habitat of the Bay-Delta Estuary;
- Category II: Regulation of water project operations and flows in the Delta to minimize harmful environmental impacts of water transport and export activities; and
- Category III: Control of non-flow factors affecting the Bay-Delta ecosystem, such as unscreened diversions, physical habitat degradation, and pollution.

With respect to the San Joaquin River, the 1994 Accord contained several provisions:

- Establishment of interim flow objectives on the mainstem San Joaquin River at Vernalis;
- Reevaluation/adjustment of these flow objectives (up or down) utilizing additional monitoring and statistical data;
- An assurance by USBR to provide interim flows at Vernalis using New Melones Reservoir; and
- Installation of a fish/flow directional barrier at the head of Old River.

*The 1994 State/Federal Accord on Bay-Delta environmental protection was "a major victory of consensus over confrontation."*

*-- Gov. Pete Wilson*



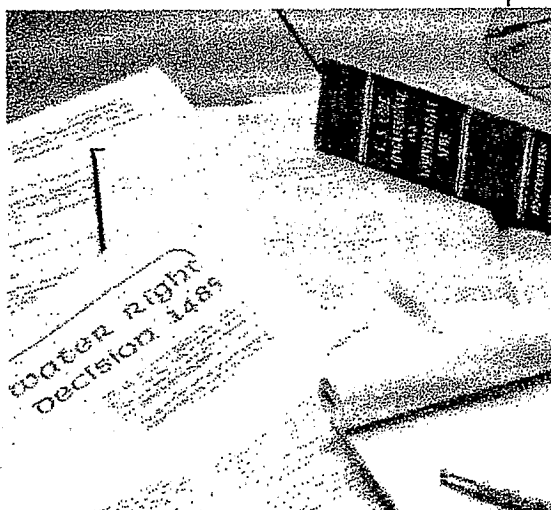
U.S. Secretary of the Interior Bruce Babbitt and California Governor Pete Wilson at the signing of the Bay-Delta Accord.

- Photo courtesy of Water Education Foundation

# Background



To implement the 1995 WQCP, the State Board is planning to schedule formal water rights hearings for early 1997.



San Joaquin interests have filed a lawsuit disputing the San Joaquin flow objectives contained in the 1995 WQCP.

## 1995 State Board Water Quality Control Plan.

Following a public hearing process, on May 22, 1995, the State Board adopted a new WQCP which set forth standards for operations, flows, and water quality in the Bay-Delta Estuary. In workshops that preceded the December 1994 draft WQCP, the State Board encouraged parties to submit individual and jointly negotiated proposals recommending standards to be included in the plan. The proposals received included the U.S. Environmental Protection Agency's September 1994 draft standards, the U.S. Fish and Wildlife Service's (USFWS) Biological Opinion for Delta Smelt, the National Marine Fisheries Service's (NMFS) Biological Opinion for Winter-Run Salmon, a proposal from the California Department of Fish and Game, the 1994 Bay-Delta Accord, and recommendations from San Joaquin River interests and other parties.

The water quality objectives and other requirements of the 1995 WQCP set forth general needs for protection of beneficial uses, but are not self-implementing. Many of the 1995 WQCP requirements will be implemented after lengthy water rights hearings. To implement the WQCP, the State Board initiated a series of workshops prior to commencement of formal water rights hearings in early 1997. These formal hearings will look at reasonable implementation measures, including flow releases from upstream users, for meeting the new water quality standards.

## San Joaquin River Litigation.

In June 1995, the San Joaquin Tributaries Association (SJTA) filed a lawsuit over the State Board's adoption of the May 1995 WQCP. SJTA's complaint asserted that the WQCP was invalid for several reasons, chief among these was: (1) the lack of adequate scientific review and data necessary to design a flow objective for the San Joaquin River; (2) inadequate capability of the San Joaquin Basin water users to supply these flows without significant social and economic harm; and (3) the dispute over the State Board's authority to require senior water rights holders to supply increased flows while the junior export projects were still allowed to pump significant quantities of San Joaquin flow.

A number of parties have intervened on both sides of this litigation. The outcome of the litigation is uncertain. Moreover, if pursued to completion, this litigation could take several years and result in the rescission of all or various components of the WQCP, including the San Joaquin River flows which the Proposal seeks to implement.

The Proposal described in this briefing book is intended to resolve the issues related to this legal dispute and focus the parties on consensus building and problem solving instead of litigation.

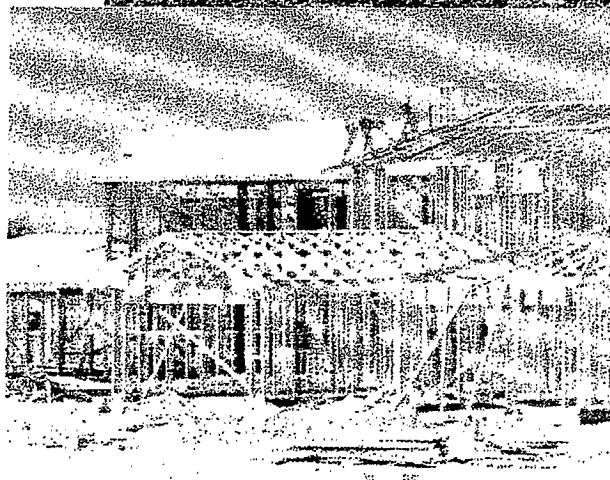
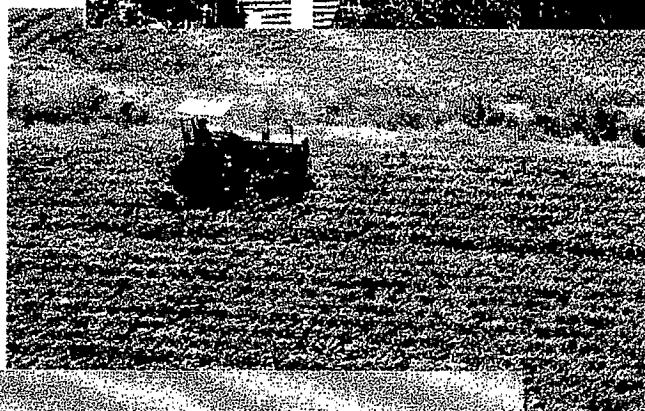
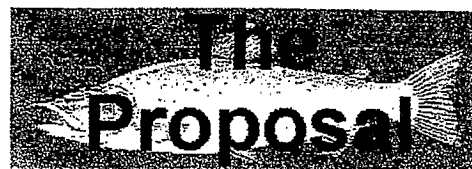
## Key Elements of the Proposal

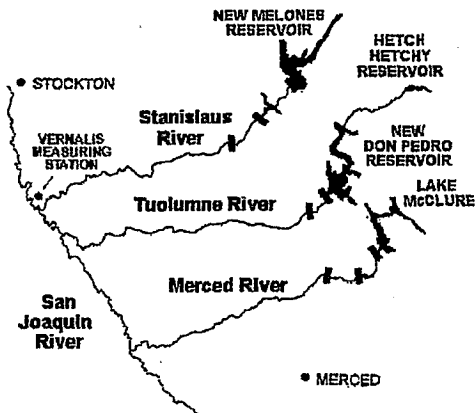
**Overview.** The Proposal sets forth a mechanism by which San Joaquin River interests will assist in implementing the 1995 WQCP by improving San Joaquin River flow and habitat.

The actions that have been committed to by the parties serve as an important building block towards San Joaquin environmental protection. The Proposal encourages additional measures from other parties to improve flow and habitat. The parties expect their actions will be coordinated to the maximum extent possible with other ongoing restoration efforts by federal, State and local agencies.

### Key Elements

- X Vernalis Flow Improvements
- X Stanislaus Flow Component
- X Old River Barrier Installation
- X Monitoring Measures
- X Program Funding
- X Cooperative Approach





### Vernalis Flow Improvements.

The Proposal provides specific minimum base flows and significant pulse flows that exceed historical average flows in the San Joaquin River. The water needed to meet the proposed flows will be provided from the Stanislaus, Tuolumne, and Merced river tributaries along with water from the CVP supplies of the San Joaquin River Exchange Contractors.

This Proposal recommends:

1. A minimum flow on the San Joaquin River at Vernalis of 1,000 cubic-feet per-second (cfs) from October 1-31 and February 15-May 31.
2. A 31-day pulse flow for outmigrating juvenile salmon during the 61-day period of April - May.

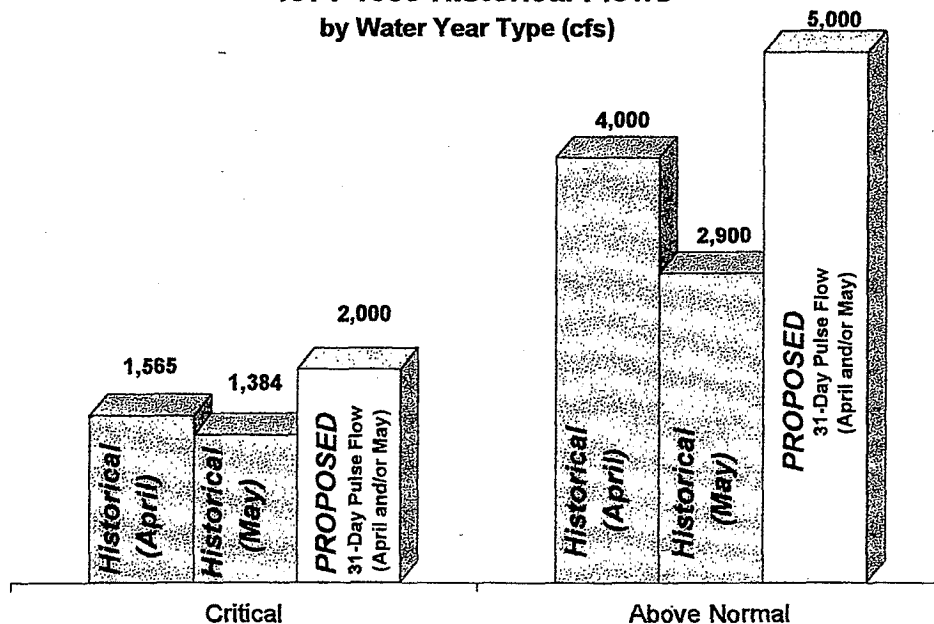
The combined base and pulse flow, classified by water-year type, total:

- 2,000 cfs in critical dry years;
- 3,000 cfs in dry years;
- 4,000 cfs in below-normal years;
- 5,000 cfs in above-normal years;
- 5,000 cfs in wet years.

The following chart depicts the improvements provided by the proposed additional pulse flows at Vernalis during water years classified as critically dry and above-normal.

Although this Proposal provides lower flows than the "placeholder" Vernalis flow objectives of the 1995 WQCP, the parties believe that the proposed flows in combination with other actions will provide a level of fishery benefits consistent with the objectives

**Proposed Minimum Vernalis 31-Day Pulse Flows versus 1971-1995 Historical Flows by Water Year Type (cfs)**





of the 1994 Accord. Biological monitoring will be conducted to evaluate the success of these measures and should strengthen the level of biological science on the San Joaquin River. On the basis of improved information, the parties intend to support and participate in a process to revise the 1995 WQCP Vernalis flow objective at the next triennial review, consistent with the provisions of the 1994 Accord.

### **Stanislaus River Component.**

Flows provided on the San Joaquin River at Vernalis through this Proposal are based on the condition that a specified schedule of flows for fish and water quality protection will be provided by the USBR on the Stanislaus River.

Analysis of flows indicate an availability of 226,000 acre-feet per year on average during critically dry years, and 276,000 acre-feet per year on average during above normal years, after delivery to senior water rights holders.

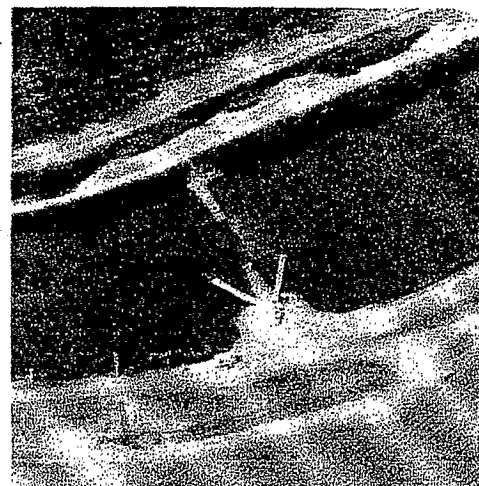
This schedule of flows is designed to prevent New Melones Reservoir from going dry during a critically dry period, but still provide contracted water for instream flow needs.

### **Old River Barrier Installation.**

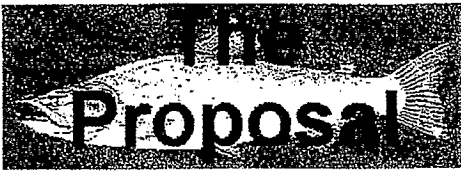
This Proposal recommends the installation of a permanent, operable fish/flow barrier to improve salmon smolt survival and water quality conditions on the San Joaquin River (see map on back cover). This barrier would be located on Old River near its confluence with the San Joaquin River. Old River begins just northeast of the City of Tracy and links the mainstem San Joaquin River to the interior South Delta.

A temporary rock barrier has been installed annually at this location for many years. The proposed "operable" barrier will keep San Joaquin Basin chinook salmon smolts within the mainstem of the San Joaquin River, away from the State and federal diversion facilities located in the southern Delta. This operable barrier would have the capability to be opened or closed to benefit other in-Delta species, such as delta smelt, as well as provide for flood control. The Old River fish/flow barrier is an identified element in the 1994 Accord.

Biological analyses suggest the barrier is a key element for increasing the survival of downstream migrating juvenile and the total number of returning adult salmon in the San Joaquin Basin. Potential impacts of such a barrier to other beneficial uses would be mitigated as part of the barrier program.



*Temporary fish/flow barrier on Old River  
— Photo courtesy of DWR*

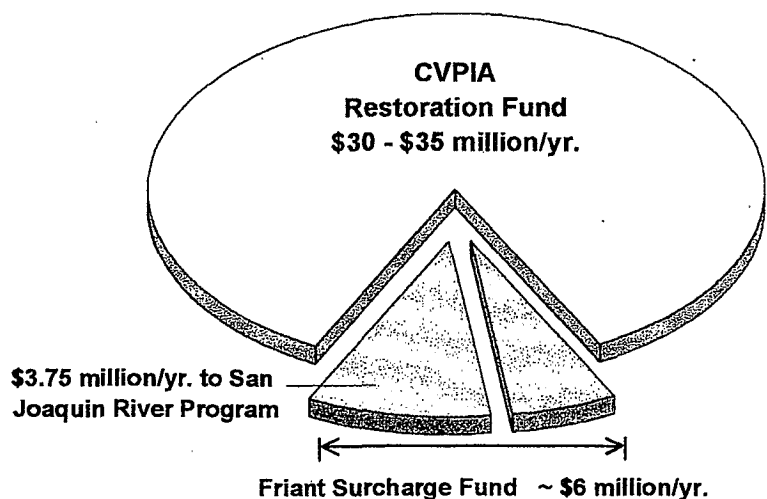


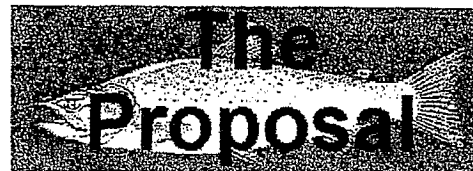
**Monitoring Measures.** Under the Proposal, monitoring will be funded and implemented to: (1) permit identification of factors influencing spawning success; (2) verify whether measures taken to remedy these factors are working; and (3) allow for future triennial reviews to be based on more complete biological information.

**Program Funding.** In recognition of the cost of developing necessary water supplies for contributing to meeting the State Board's Vernalis Standards under the Proposal, the San Joaquin River interests will receive \$3.75 million annually from the Central Valley Project Improvement Act (CVPIA) Restoration Fund. The Restoration Fund includes revenue from the Friant surcharge (an assessment of \$4.00 per acre-foot on water used in the Friant

service area) which would be used for the purpose of funding this program. The surcharge was established to provide alternate means for Friant water users to meet environmental obligations established in the CVPIA other than through increased flow downstream of Friant Dam. A portion of the payment to the San Joaquin River interests, \$1.0 million of the \$3.75 million, will be used annually to: (1) fund new instream habitat and other non-flow items to enhance production of salmon on the mainstem of the San Joaquin River; and (2) pay for the administration of flow coordination, oversight of the habitat work, and monitoring. The use of a portion of the surcharge for this purpose is consistent with the CVPIA. It is also consistent with the overall goal of fish doubling in the CVPIA Anadromous Fish Restoration Plan.

#### Proposed Funding for San Joaquin River Flow & Restoration





**Cooperative Approach.** As part of this Proposal between the export interests and the San Joaquin River interests, the litigation filed by SJTA will be stayed pending implementation of the Proposal and the action will be dismissed when the Proposal is fully implemented. Execution of the Proposal is based on the following conditions:

- Agreement among all necessary parties for the installation of a permanent operable barrier at the head of Old River;
- Agreement by federal agencies regarding New Melones Reservoir flows and CVPIA funding;
- Agreement by the State Board that implementation of the Proposal constitutes compliance with the goals of the 1995 WQCP; and
- Agreement among all the parties on mechanisms for the revision, termination, or renewal of this Proposal in the event of changes to State/federal environmental regulations, which substantially change the conditions upon which this Proposal is based.

## TECHNICAL OVERVIEW

Throughout the discussions that led to this Proposal, it was the intent of the parties to:

1. Ensure the Proposal would have net environmental benefits; and
2. Craft a lasting resolution of flow issues (i.e. the proposal would need to meet water user needs while making a commitment of water and other actions for the environment).

To address these concerns, hydrologic and biologic analyses were completed to serve as the basis for this Proposal. The following is a summary of those analyses.

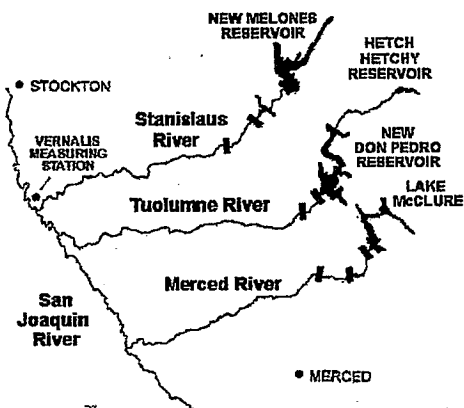
## HYDROLOGIC ANALYSIS

**Overview.** The analysis completed on the San Joaquin River system used USBR's San Joaquin Area Simulation Model to evaluate hydrology and operations. The hydrologists also incorporated the effects of revised Federal Energy Regulatory Commission (FERC) flows and other supplementary flow release requirements on the Tuolumne River.

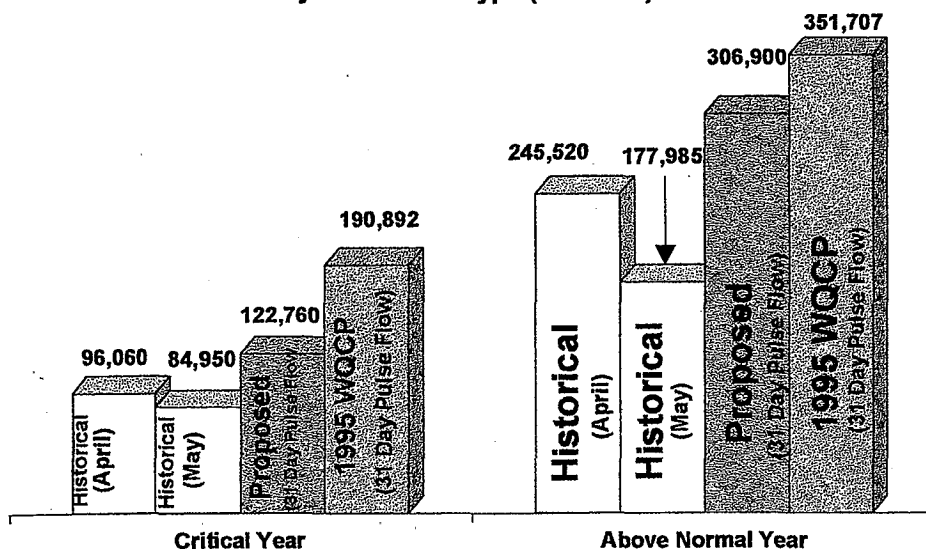
## Stanislaus River Flow Component.

The Stanislaus River is one of the major tributaries to the mainstem San Joaquin River. Water supplies are captured in four major reservoirs, the largest of which is New Melones Reservoir operated by the USBR. Results of the hydrologic analysis showed that during the 1987-92 drought period, after delivery to senior water-rights holders, a total of approximately 226,000 acre-feet per year could be released by the USBR as baseline flows. Fishery flows and water quality could be maintained without having New Melones go dry, and, in non-critical years, still provide water deliveries to New Melones contractors. Of this total, it was assumed that 156,000 acre-feet per year would be allocated specifically to fishery purposes and 70,000 acre-feet per year would be allocated to water quality purposes. Fishery releases would increase 25,000 acre-feet per year during dry and below normal years and 50,000 acre-feet per year during above normal and wet years.

The pattern of fishery releases was developed by biologists to be consistent with spawning, incubation, rearing and migration needs of fall-run chinook salmon, providing an emphasis for flows during October through June, with an outmigration pulse flow occurring between April and May. The baseline Stanislaus River flows, provided by the USBR, will also contribute to meeting goals of the flows recommended by the USFWS in the draft Anadromous Fish Restoration Plan for the lower Stanislaus.



## Minimum Vernalis 31-Day Pulse Flows versus Historical April/May (1971-1995) by Water Year Type (acre-feet)



### Tuolumne River Flow

**Component.** The Tuolumne River is located south of the Stanislaus River and has three major reservoirs, the largest of which is New Don Pedro Reservoir. Currently, water agencies that have rights to Tuolumne River flows are finalizing an agreement with FERC that will increase the minimum instream flow requirements for the Tuolumne. The incremental increase will range from 40,000 acre-feet in critical years to 175,000 acre-feet in above-normal and wet years. This agreement will improve monthly flow conditions on the mainstem San Joaquin in all water-year types.

### Merced River Flow

**Component.** The Merced River, originating in Yosemite National Park, stores flows in Lake McClure (behind New Exchequer Dam). Flow releases from New Exchequer Dam are regulated under FERC and Davis-Grunsky Act flow requirements. These requirements represent the baseline flows for the Merced River.

### Supplemental Flow

**Component.** The amount of water provided by San Joaquin interests in this Proposal -- above that provided by the baseline operation of the Stanislaus River, the revised operation of the Tuolumne River, the baseline operation of the Merced River, and other minor basin flows -- ranges up to 47,000 acre-feet per year depending on water-year type. These additional flows will be provided, as needed, by San Joaquin River interests, with the exception of Friant Water Users.



Yosemite Falls --  
contributes to flows on the Merced River

*These additional flows, in combination with the 1994 Accord export constraints, habitat improvements, monitoring, and completion of the fish/flow directional barrier project, will significantly improve overall conditions for San Joaquin River salmon.*

*Although the main emphasis has been on increased flows for salmon smolt outmigration, this is only a short period in the salmon life cycle, taking on the order of two weeks.*

**Potential Sources Beyond the Proposal.** Potential sources of water beyond the Proposal include: more extensive groundwater pumping, increased agricultural water conservation, land fallowing, or land retirement. These actions would cause significant local and regional economic impact. In addition, the San Joaquin County groundwater basin has already seen a decline in the subsurface water levels and water quality. This degradation has resulted in the closing of wells in western San Joaquin County.

The biological value of additional flow is inconclusive. Further analysis should be performed of the benefits obtained from additional flows versus the high costs associated with providing these flows.

## BIOLOGY

**Overview.** The parties believe that the actions included in this Proposal will provide a level of benefits consistent with the goals of the 1995 WQCP. These actions were developed with a primary emphasis on instream flow and habitat conditions for fall-run chinook salmon within the San Joaquin River watershed, from the Merced River downstream (see figure on back of cover). Based on consideration of the life cycle of the chinook salmon -- from the survival and emigration of juveniles to the migration and reproduction of adults -- the proposal supports the rapid and reliable implementation of:

- Integrated improvements in flows and habitat conditions within the tributaries and the lower San Joaquin River migration corridor;
- An increase in spring instream flows; and
- Actions that are compatible with upstream habitat improvements.

A number of factors, both flow and non-flow related, impact the timing and success of spawning runs in the lower San Joaquin River. However, the significance of these factors is difficult to ascertain since only limited data are available from studies conducted within the San Joaquin River under current environmental conditions. For this reason the Proposal involves an integrated set of actions, addressing instream flows, habitat rehabilitation, and monitoring.

**Flow Measures.** The Proposal, which provides minimum base flows in October and April-May (see hydrologic section), also includes significant April-May pulse flows. Pulse flows potentially decrease predation in two ways: first by reducing smolt transport time and exposure to predators; and second, by increasing the turbidity of the water, thereby affecting predator identification of smolts.

**Habitat Improvement.** Physical habitat improvement, in conjunction with flow increases, is a critical element of this Proposal. In addition to continuing the support of existing habitat programs, the Proposal will set aside approximately \$1 million annually to support several new programs.

Cleaning spawning gravel and establishing new gravel where warranted could dramatically improve smolt production. Reducing smolt outmigration times by restoring channels and removing artificial pools could significantly decrease smolt exposure and loss to predators. Cleaning of gravel during pulse flows

will affect turbidity and could also decrease losses to predation. Screening water diversions and reducing pesticide runoff will also aid salmon survival.

## Monitoring

**Measures.** The parties support supplementing and better integrating the elements of the existing biological monitoring programs. These integrated programs would be designed to provide the information necessary to evaluate the effectiveness of the actions implemented by this Proposal. The expanded monitoring program could include:

- Adult upstream migration monitoring in the upper tributaries;
- Juvenile salmon monitoring in the lower San Joaquin River;
- Salmon smolt mark and recapture studies to identify sources of mortality; and
- Evaluation of alternative Old River Barrier operations.



*Fish monitoring in the Delta — Photo courtesy of DWR.*

*A number of factors influence spawning success and survival of juvenile salmon . . . however, the significance of these is difficult to determine with the limited data available.*



*Gravel restoration efforts to support improved salmon spawning on the Tuolumne River.*

*—Photo courtesy of DWR*

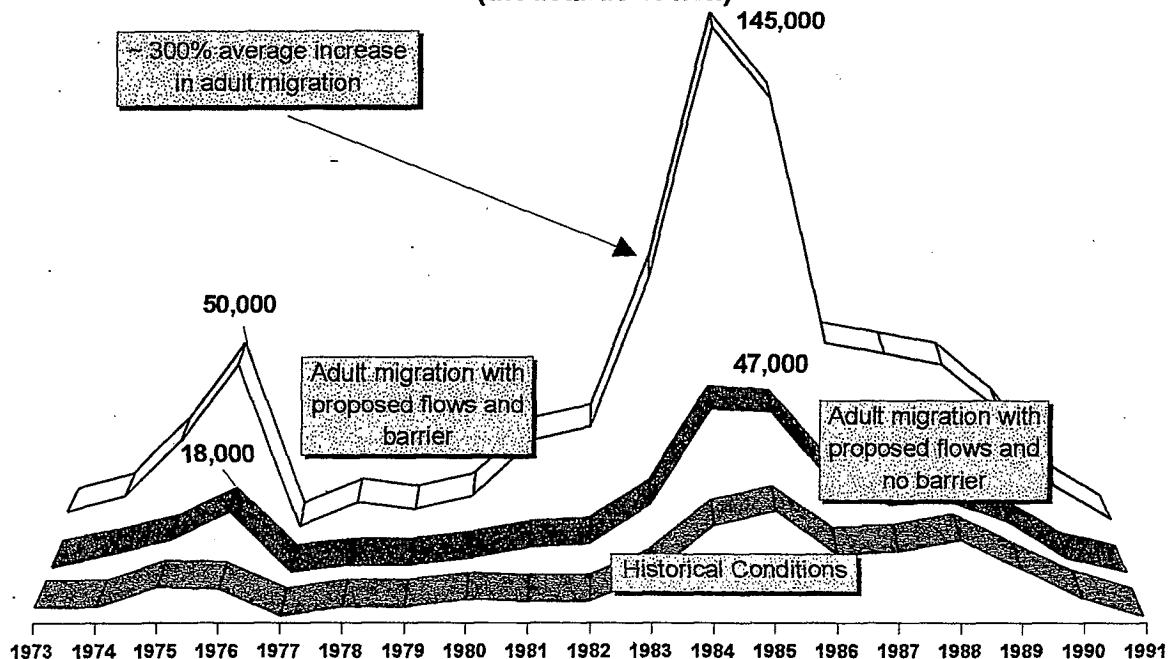
*The construction of an operable fish/flow directional barrier at the head of Old River is a key element for increasing the overall survival of outmigrating salmon smolts.*

## Old River Fish/Flow Barrier.

The parties support the installation of an operable fish/flow barrier at the head of Old River northeast of the City of Tracy. Installation of a permanent, operable fish barrier on the Old River was a key element of the 1994 Accord. The objective of the barrier is to confine salmon smolts to the San Joaquin River, away from the State and federal export pumps, numerous South-Delta agricultural diversions, and in-Delta predation. The barrier can also be opened or closed to maximize benefits for other species. The benefits of the barrier

were analyzed using the fish mark and recapture studies and the San Joaquin salmon population simulation model (known as EACH). Analysis of the results, shown below, demonstrate the benefit of installing an operable fish/flow directional barrier. Estimates show the barrier resulting in an approximate three-fold increase in predicted escapement as compared to historical conditions. In order to continue analyses of the benefits to both salmon and other native species, the parties have emphasized installing an "operable" barrier.

**Benefits of Installation of the Old River Barrier**  
(thousands of fish)





## Q&A

### *How do you propose to create conditions necessary to optimize salmon production in the San Joaquin Basin?*

The parties to the Proposal believe that it is in everyone's interest to implement flows at such levels that are achievable and can be implemented now. The new additional flows, in combination with export limits contained in the 1995 WQCP, the closure of the Old River Barrier in the spring, non-flow habitat improvements, and monitoring, will improve the overall habitat conditions for salmon and other species in the San Joaquin River and Delta. Other actions which are currently underway, such as CVPIA, CALFED, and the San Joaquin River Management Plan (SJUMP), could "bridge the gap", if necessary, between the flows identified in this Proposal and subsequent WQCP flow objectives, which emerge from triennial review when better scientific information is available.

### *How will subsequent WQCP flow objectives be identified?*

Consistent with the 1994 Accord, flow objectives will be revised at the triennial reviews with the benefit of better scientific information. Currently, there is limited biological information upon which to base flow standards. The Proposal will yield better scientific information through

its support of monitoring programs. The parties to the Proposal are committed to improved information and an open dialogue that balances environmental and economic impacts of proposed actions.

### *Why are the flows contained in this Proposal different than the 1995 WQCP flow objectives?*

The parties believe that this Proposal will provide a level of fisheries benefits consistent with the objectives of the 1995 WQCP. The flows contained in this Proposal are based upon the best available scientific data. This is consistent with the 1994 Accord which provided that the San Joaquin River flows will continue to be evaluated as to timing and magnitude.

As previously stated these additional flows, in combination with export limits, an Old River Barrier, non-flow habitat improvements, and monitoring, will improve the overall conditions for salmon and other species in the San Joaquin River and Delta and should lead to the goal of doubling San Joaquin Basin salmon production.

### *The plan requires releasing water in the spring, thereby resulting in less flow during other periods in the year. How will water quality in the lower San Joaquin River and South Delta be affected?*

The parties to the Proposal do not believe that summer water quality in the lower San Joaquin River and South Delta will be adversely

# Questions & Answers

impacted. Our modeling shows that flows in the river will not be reduced in the summer. For one thing, higher summer flows will be present with or without this alternative because of the recently signed FERC settlement agreement on the Tuolumne River.

Furthermore, this Proposal does not relieve the CVP of its water quality obligations at Vernalis and in the South Delta. Water quality releases will also be required from New Melones. Nor does this Proposal relieve the State Board from its obligation to enforce the San Joaquin River salinity standards at Vernalis by requiring those discharging water in excess of salinity standards into the river to cease, mitigate or reduce all such discharges. Rather than relying on additional fresh water flows to dilute such salt, the State Board should focus on real solutions to the San Joaquin Valley salinity problem.

*Why is the CVPIA Restoration Fund being used to meet the water quality obligations of the CVP and other water users in the San Joaquin Basin?*

This Proposal recommends the use of a portion of the CVPIA Restoration Fund. The fund includes revenue from a Friant Water User surcharge. That surcharge was authorized by Congress to allow Friant users to meet their obligations under the CVPIA in-lieu of providing water. Therefore, use of this surcharge to purchase water for fish habitat improvement in the San Joaquin is consistent with the CVPIA.

The Vernalis flow objectives in the 1995 WQCP are driven by the need to

provide habitat for San Joaquin Basin salmon and other species. Use of Restoration Fund money for the purpose of improving habitat for Central Valley species is a specified use of those funds. The CVPIA requires the Department of Interior to acquire water to improve conditions for fish. Use of the funds pursuant to this Proposal will also assist in meeting the Anadromous Fish Restoration Program objectives consistent with the CVPIA.

*Why don't the Friant Water Users contribute any water?*

Except in extremely wet years, requiring releases of water to the San Joaquin River from Friant Dam would be unreasonable given the limited availability of water and the need to maintain existing economic development in the Friant service area. There would also be significant losses of water that would occur in trying to re-establish the hydraulic link between Friant Dam and the Delta. In-lieu of providing water, the Friant Water Users are providing money, using the Friant surcharge portion of the Restoration Fund.

*The price seems high for this water. What are the reasons for this price?*

Of the total \$3.75 million paid annually under this Proposal, \$2.75 million will be used to make payments on the long-term debt needed to finance the infrastructure improvements needed to ensure the availability of the water. The price also reflects some of the cost of the existing facilities development, without which it would be difficult to

make the water available when and where it is needed by the fishery, as well as the risk associated with providing the water. This price is considerably less than the cost to develop new water supplies within the basin. Finally, this water comes with a certainty of supply (a "firmness") which makes it more valuable.

The remaining \$1 million is to be set aside annually in a separate fund to be used in the San Joaquin Basin for non-flow fish habitat improvements, monitoring, and administration. This fund would be in addition to ongoing fish habitat improvement projects and monitoring activities, and could be supplemented by other programs such as Category III, DWR/DFG Banks Pumping Plant Fish Protection Agreement, and the Salmon and Striped Bass Stamp Program. These efforts would be coordinated with other programs such as CVPIA, CALFED and SJRMP.

*How will the SJTA and the Exchange Contractors provide the water?*

This Proposal does not specify which agency is to provide water and in what quantities. Instead, the member agencies of the SJTA and the San Joaquin River Exchange Contractors have, by separate agreement, contracted with one another to provide water in sufficient quantities to meet the flow objectives outlined in this Proposal.

*How much of the water in this alternative is really "new" water?*

All of the water in this Proposal is "new" water in the sense that it is water that has not been released to the San Joaquin River historically. Additional water will be provided by the SJTA members and the Exchange Contractors pursuant to their agreement. Potential sources of water include water developed as a result of increased efficiencies or system re-operation, additional releases from storage, and conjunctive use of ground and surface water. Separate and apart from this agreement, new water will also come from the Tuolumne River as a result of the recently signed FERC settlement agreement. Additional flows may come from the pending agreement between Merced Irrigation District and DFG.

*The San Joaquin interests will be receiving \$3.75 million annually. How will they be held accountable?*

The San Joaquin interests will establish a joint powers authority (JPA) to oversee the implementation of this Proposal. The JPA will receive all funds provided for in this Proposal and act as an administrator to implement the Proposal. The JPA would determine how the funds would be allocated, after taking into consideration program benefits, outside funding sources, and other ongoing programs. The JPA would also be the agency responsible for implementing the flow provisions in this Proposal.



CALIFORNIA

COMMITTEE ON APPROPRIATIONS  
COMMITTEE ON THE JUDICIARY  
COMMITTEE ON RULES AND ADMINISTRATION

## United States Senate

WASHINGTON, DC 20510-0504

### STATEMENT BY SENATOR DIANNE FEINSTEIN REGARDING THE SAN JOAQUIN RIVER COMPREHENSIVE PLAN

October 18, 1994

I want to state my opposition to any effort to take water from Friant Dam for the purposes of restoring a long gone fishery on the San Joaquin River.

The unique situation facing the Friant Division of the Central Valley Project was referenced in the Central Valley Project Improvement Act. This law makes a specific exemption for the Friant Division, allowing districts it serves to contribute money instead of water to address the environmental issues targeted in the legislation. The Friant Division is currently contributing \$6 million per year, at a rate of \$4 per acre foot, in addition to approximately another \$9 million for fish and wildlife restoration purposes.

It has been estimated that as much as 300,000 to 500,000 acre feet of water could be required to sustain a year-round, anadromous fishery along the entire length of the San Joaquin River, given the stream temperatures and flows required. This compares with the Friant Division's "firm yield" of 800,000 acre feet per year, and its actual supply for 1994 of 640,000 acre feet.

There is much at stake here: 10,000 small, family farms, generating an annual agricultural product of over \$2 billion, on nearly one million acres of land.

The Central Valley Project Improvement Act requires that the San Joaquin River Comprehensive Plan be "reasonable, prudent and feasible." If this is the criteria, and it is, then any study is useless and in my opinion, a waste of money. Because to develop the fishery would take virtually all available water and clearly this is unacceptable.

The Central Valley Project Improvement Act specifically states that the Secretary of the Interior may not release any water for the restoration of the San Joaquin River without specific authorization from Congress.

If, by some implausible combination of circumstances, this foolish proposal reaches Congress for action, I will do everything I can to kill it in the Senate.

The bottom line is that when the process is complete, the Friant Division will not be the water supply source necessary to restore a fishery on the San Joaquin.

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(415) 245-4777



## United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

For Immediate Release

October 21, 1994

Contact: Mary Helen Thompson  
Bob Walker  
(202) 208-6416

Statement of Kevin Sweeney  
Assistant to the Secretary of the Interior

re: Friant Division

Secretary Babbitt has made it clear there will be no diversion of water from the Friant Division of the Central Valley Project to restore the San Joaquin River salmon run below Friant Dam.

The Central Valley Project Improvement Act requires a reasonable, prudent and feasible plan to address fish and wildlife concerns on the San Joaquin River. The Department will continue with development of that plan, as the law requires.

But it is the Secretary's best judgement that the amount of water required to restore and sustain the San Joaquin River fishery would clearly go beyond the "reasonable, prudent and feasible" criteria. Thus, he has made it clear that he will not propose the release of Friant Division water for San Joaquin River salmon recovery.

It is important that the Department focus recovery efforts and resources on those fisheries with the best chance at recovery; it is clear that this is not such a fishery.

-- DOI --

## Environmental Water Caucus

P.O. Box 471958  
San Francisco, CA 94147-1958

Telephone 415-931-3414

April 10, 1996

TO: John R. Wodraska, Metropolitan Water District  
Tom Clark, Kern County Water Agency  
Dan Nelson, San Luis & Delta-Mendota Water Authority  
Tom Hurlbutt, Tulare Lake Basin Water Storage District

FR: Environmental Water Caucus  
Share The Water

RE: Your proposed abandonment of the Bay-Delta Accord

Our meeting on Monday the 8th at MWD with the "San Joaquin River Group" and the "Export Interests" confirmed what we have been hearing from various sources -- that you and your agencies are preparing to repudiate your support for the Bay-Delta Accord. At the briefing scheduled for April 16, representatives of your agencies and other water users apparently intend to announce a settlement plan which implements the much lower Vernalis flows recommended in the 1994 CUWA/Ag proposal, not those in the Accord.

We are stunned by your proposal. You or your representatives were signatories to the Bay-Delta Accord, which includes express agreement on Vernalis flows to be implemented by the State Board. The proposed settlement plan would repudiate that agreement, plain and simple.

We urge you to reconsider your decision to abandon the Accord. We stand ready to engage in consensus negotiations with you and other water users on various alternatives to implement the flows agreed to in the Accord -- but we will vigorously oppose any weakening of that agreement.

We request that you cancel your briefing on the 16th and schedule a new round of negotiation sessions that include all the major stakeholders, including many that were not consulted in development of the proposed settlement plan. Publicly announcing a settlement plan on the 16th that is a repudiation of the Accord would jeopardize the progress that has been made since December 15, 1994. If you proceed with the announcement on the 16th, the environmental and fishing communities will have no choice but to oppose the proposal with all means at our disposal.

attachment: letter to John Caffrey

**ENVIRONMENTAL WATER CAUCUS  
SHARE THE WATER**

April 10, 1996

John Caffrey, Chair  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, Ca. 95812-0100

**RE: PROPOSED SAN JOAQUIN RIVER WATER RIGHTS SETTLEMENT**

Dear Mr. Caffrey,

Two groups of water users known as the San Joaquin River Group (SJRG) and the Export Interests (EI) have described, at the Board's March 12, 1996, water rights workshop and in a March 28, 1996, letter to you, a proposed water rights settlement plan that they contend should constitute compliance with the 1995 Water Quality Control Plan (WQCP) for the San Francisco Bay-Delta estuary on the part of the San Joaquin River Group. In its present form (to the extent it has been communicated to us), the SJRG/EI proposal is not acceptable to the environmental and fishing communities as the basis for an alternative in the Board's draft water rights environmental impact report (EIR).

The undersigned organizations support efforts to achieve consensus on the complex issues involved in allocating responsibility among water rights holders for implementing the 1995 WQCP, provided that such efforts result in full implementation of that plan's requirements. However, the proposed SJRG/EI settlement is not an effort to implement the 1995 WQCP, but to weaken it and the underlying December 15, 1994, Principles for Agreement on Bay-Delta Standards (Bay-Delta Accord). The proposal does not meet minimal criteria for credible consensus building for several reasons:

- It would expressly and intentionally fail to implement the 1995 WQCP's Vernalis flow requirements.
- It would discharge various federal water user obligations in a manner inconsistent with the Central Valley Project Improvement Act (CVPIA).



John Caffrey  
April 10, 1996  
Page 2

- Important stakeholders, including the U.S. Bureau of Reclamation (USBR), federal and state resource agencies, and environmental and fishing interests, were not participants in development of the SJRG/EI proposal, and have yet to receive any detailed information on the proposed settlement plan.

Brief preliminary comments on the SJRG/EI proposal, based on the limited information available to us from the March 28 letter and other sources, follow below.

### Vernalis flows

The Vernalis flow regimes proposed by the SJRG/EI apparently will expressly and intentionally violate the Vernalis flow objectives contained in the 1995 WQCP. Regardless of the other merits or demerits of the proposal, this component of the SJRG/EI settlement plan cannot be included in any of the water rights EIR alternatives, and must not be sanctioned by the Board. The purpose of the EIR is to implement the 1995 WQCP objectives, not revisit them.

We are extremely dismayed to learn that the four EI organizations which signed the Bay-Delta Accord now endorse Vernalis flow regimes that fall well short of those in the Accord and the 1995 WQCP. This position is a direct repudiation of the Bay-Delta Accord. Attachment B of the Accord states that "the SWRCB shall assign responsibility for the following flows, together with other measures in the watershed sufficient to meet the narrative criteria, in the San Joaquin River at Vernalis among the water right holders in the watershed" (emphasis added), with specific flow regimes (later adopted in the 1995 WQCP) identified. Re-evaluation of the timing and magnitude of these flows, as envisioned in the Accord and consistent with state and federal law, should occur during triennial review of the 1995 WQCP, not during its implementation. If the SJRG/EI has information on alternative flow regimes which they believe will fully protect beneficial uses -- a position which we do not believe is scientifically justified -- that information should be submitted to the Board for its consideration during the triennial review process.

The SJRG/EI letter also suggests that habitat improvements and other non-flow measures undertaken as part of the settlement plan represent an adequate substitute for implementing the greater Vernalis flow objectives of the 1995 WQCP. However, the Bay-Delta Accord specifically calls for these "other measures in the watershed sufficient to meet the narrative criteria" in addition to implementation of the Vernalis flow objectives which the Board adopted in the 1995 WQCP. Moreover, the Accord's substantially unmet Category III

John Caffrey  
April 10, 1996  
Page 3

commitments were included precisely to address some of these kinds of measures.

We also fail to understand why the SJRG/EI letter cites consistency with the requirements of the Bay-Delta Accord as a major reason for constructing a barrier at the head of Old River, when the SJRG/EI proposal's Vernalis flow regimes are so clearly inconsistent with the requirements of the Bay-Delta Accord.

Finally, contrary to the assertions of the March 28 letter, implementation of the SJRG/EI proposal will not help avoid protracted legal challenges to the water rights decision. Any water rights decision which does not fully implement the 1995 WQCP objectives is likely to be challenged in court by environmental and fishing interests.

#### Stanislaus River fish and water quality flows

The SJRG/EI letter does not specify its proposed Stanislaus River fish and water quality flows, nor their relationship to doubling flows in the Anadromous Fish Restoration Plan (AFRP) under development by the U.S. Fish and Wildlife Service (USFWS). In general, the Board should defer to the AFRP as to what Stanislaus River fish and water quality flows are appropriate for consideration in its water rights EIR. The final AFRP is expected to be issued in the summer of 1996.

#### Friant surcharge payment

The CVPIA Friant Division surcharge is intended to help discharge obligations of Friant Division water users. In particular, the Friant surcharge is in lieu of actual water contributions to the 800,000 acre-feet of water dedicated to environmental purposes, while USBR studies salmon restoration possibilities on the upper San Joaquin River.

Use of the surcharge is intended to implement fish and wildlife objectives of the CVPIA. Its disposition is the responsibility of USFWS and USBR, which may set priorities for use of the surcharge which differ from those outlined in the SJRG/EI proposal.

It should also be emphasized that neither the creation of this surcharge nor any other action taken under the CVPIA precludes the Board from considering or requiring the release of water from Friant Dam to help meet the 1995 WQCP Vernalis flow objectives or other applicable law.


John Caffrey  
April 10, 1996  
Page 4

Joint Powers Authority


We oppose as unnecessary and improper the formation of any new water user entity that is intended to oversee implementation of the 1995 WQCP's Vernalis flow objectives, or of other measures in the watershed to achieve the narrative objective for salmon protection. It is the role of the Board and other responsible agencies, not water users, to provide such oversight. Water user efforts to coordinate implementation activities may be desirable, but should occur separately, such as in the form of a San Joaquin coordinated operations group, consisting of water supply and resource agencies, other affected parties, and public interest groups, akin to the state-federal model, or through existing cooperative vehicles such as the currently underfunded Category III program:


In summary, we find the SJRG/EI proposal to be inconsistent with the Bay-Delta Accord and with the commitment of the EI signatories to the Accord. As such, it is potentially extremely damaging to the consensus efforts that have grown out of the Accord.

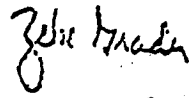
Sincerely,

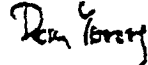
  
Gary Bobker  
The Bay Institute of San Francisco

  
Jim Crenshaw  
California Sportfishing Protection  
Alliance

  
Barry Nelson  
Save San Francisco Bay Association

  
Hal Candee  
Natural Resources Defense Council

  
W.F. "Zeke" Grader, Jr.  
Pacific Coast Federation of Fishermen's  
Associations

  
David Yardas  
Environmental Defense Fund

# Letters & Media

*John Caffrey*  
*April 10, 1996*  
*Page 5*

cc: Sen. Dianne Feinstein  
Sen. Barbara Boxer  
Rep. George Miller  
Administrator Carol Browner, EPA  
Secretary Douglas Wheeler, Resources Agency  
Deputy Secretary John Garamendi, DOI  
R. Patterson, USBR  
M. Spear, W. White, USFWS  
L. Snow, CALFED Bay-Delta Program  
San Joaquin River Group organizations  
Export Interests organizations  
B. Buck, California Urban Water Agencies  
S. Macaulay, State Water Contractors  
J. Peltier, Central Valley Project Water Association

May 3, 1996

BY FACSIMILE AND U.S. MAIL

Mr. Gary Bobker  
The Bay Institute of San Francisco  
625 Grand Avenue, Suite 250  
San Rafael, CA 94901

Mr. Jim Crenshaw  
California Sportfishing Protection Alliance  
1248 East Oak Avenue #D  
Woodland, CA 95776

Mr. Barry Nelson  
Save San Francisco Bay Association  
1736 Franklin Street, Suite 400  
Oakland, CA 94612

Mr. Hal Candee  
Natural Resources Defense Council  
71 Stevenson Street, Suite 1825  
San Francisco, CA 94105

Mr. W. F. "Zeke" Grader, Jr.  
Pacific Coast Federation of Fishermen's  
Associations  
P.O. Box 989  
Sausalito, CA 94966

Mr. David Yargas  
Environmental Defense Fund  
5655 College Avenue, Suite 304  
Oakland, CA 94618

Gentlemen:

Proposed San Joaquin River Program

We are writing in reference to your April 10, 1996 letter to Mr. John Caffrey regarding a proposal being developed cooperatively by San Joaquin River and export interests to (1) resolve litigation which now threatens the 1994 Bay-Delta Accord and the 1995 Water Quality Control Plan (WQCP) and (2) increase environmental protection measures on the San Joaquin River. Your letter to Mr. Caffrey contains some serious misrepresentations. In fact, the proposed San Joaquin River program would expand the consensual basis for expeditious Bay-Delta solutions, including for the first time members of the San Joaquin Tributaries Association (SJTA) and the San Joaquin River Exchange Contractors, as well as the Friant Water Authority. The proposal is entirely consistent with the letter and spirit of the Bay-Delta Accord and indeed would increase the level of environmental protection for San Joaquin River salmon above the levels that could be achieved within the Accord itself. Before proceeding with the development of the proposal by seeking comments from stakeholders and eventually submitting it for consideration by the State Water Resources Control Board, we believe that it is imperative to address some of the issues raised in your April 10 letter to Mr. Caffrey.

**1. The Environmental Water Caucus (EWC) Misrepresents the Provisions of the Bay-Delta Accord.**

We are concerned that the EWC has in a very public manner asserted an extreme interpretation of the intent of the Accord which is not shared by the urban and agricultural interests who were parties to the agreement. With respect to San Joaquin River protections, the EWC misrepresents the requirements of the Accord and on the basis of these misrepresentations has gone so far as to accuse water interests of "abandoning" the Accord.

In fact, San Joaquin River issues were a significant stumbling block in achieving closure on the Accord for at least two reasons. First, as generally recognized by agency and stakeholder biologists alike, there is a paucity of adequate scientific information upon which we can base sound policy decisions regarding the level and manner of environmental protection for the San Joaquin River salmon fishery. Second, as the SJTA emphasized when

it filed legal action against the Water Quality Control Plan based on the Accord, the 1994 negotiations were conducted without the participation of upstream entities which could be affected by the full implementation of any San Joaquin River protections.

For these reasons, the Accord was cautious in its approach to the San Joaquin River. Contrary to the assertions of the EWC, the Vernalis flow measures in the Accord were, in effect, placeholders until better information could be developed. The Accord specifically recognizes the need to develop adequate scientific information so that San Joaquin River issues could be better addressed at the next triennial review. More important, during its three-year term, the Accord expressly recognized that only the United States Bureau of Reclamation (Bureau) would take actions to implement a Vernalis flow requirement. Further, it was recognized that New Melones Reservoir would be the only facility available to the Bureau for this purpose and that New Melones alone would not have sufficient capacity to fully meet the Vernalis requirement. The Accord intentionally did not create any obligations for the San Joaquin River interests who were not at the negotiating table. As such, the Accord fully recognized that the interim Vernalis requirement would not be fully implemented during the three-year term of the agreement and that development of binding long-term requirements would require better science. Your assertions that failure to immediately and fully implement the Vernalis flow elements in the Water Quality Control Plan (WQCP) represents an abandonment of the Accord are neither accurate or helpful.

Similarly, we are concerned about recent interpretations by the environmental community of provisions at the heart of the Accord. The core intent of the Accord, and the subsequent 1995 WQCP, was to allow for near-term changes in the operations of the federal Central Valley Project (CVP) and the State Water Project (SWP) in order to better protect the environment. The contractors of these projects supported these changes -- which are estimated to cause supply losses to water users during critical years averaging more than one million acre-feet -- because the Accord also promised benefits from more certainty in project operations and assurances of a regulatory decision-making process that would be more balanced, reflecting economic and social concerns as well as biological concerns. We remain committed to the operation of the water projects upon which we rely in full compliance with the Accord. However, we share the concerns expressed recently by the California Urban Water Agencies in a letter to Mr. Roger Patterson dated March 27, 1996 that interpretations of the Accord by the environmental community would have the effect of denying the water community the certainty that is required for the health of California's urban and agricultural economies.

**2. The EWC Letter Misrepresents the Proposed San Joaquin River Program which will Increase, and Not Detract from, the Environmental Benefits Generated by the Accord.**

Far from abandoning the Accord, the proactive approach being proposed by a broad-based coalition of San Joaquin River and export interests will provide protections for San Joaquin River salmon fishery that go beyond the specific requirements of the Accord. While it is not our intent to fully describe the proposal here, we urge the EWC to consider several general features of the proposal as it is discussed and finalized in the next few months. First, in the true spirit of the Accord, the proposal represents a significant expansion of the consensual approach that was the hallmark of the Accord, reaching upstream to include interests previously unrepresented in negotiations about the Bay-Delta. Under the proposal, upstream project operators other than the CVP and SWP would for the first time enter agreements to assist in providing environmental benefits in the Delta. Second, because the proposal represents a consensual approach, it can be implemented immediately, providing a greater degree of both nonflow and flow elements to improve the environment on a faster timeline than contemplated in the Accord, and will remain in effect far beyond the three-year term of the Accord. Third, we are not proposing a change in the Vernalis flow requirement in the WQCP. While we have serious concerns regarding the scientific basis of this element of the Accord, we agree that the triennial review provides the best opportunity for revising the standard, as contemplated in the Accord. Fourth, it is important to recognize that the proposed program is not intended to preclude other actions to improve fisheries and habitat in the San Joaquin River watershed, including additional purchases of water on a willing-seller basis and other appropriate actions. Finally, the proposed settlement includes dismissal of the SJTA litigation which could result in the complete abrogation of the Vernalis requirements, if not the entire WQCP.

May 3, 1996

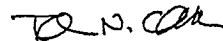
3. The EWC has Prematurely Judged the Proposal, Before being Fully Briefed on its Content.

We were quite frankly surprised at the strident, highly public opposition expressed in your April 10 letter, because we have not yet had the opportunity to brief you or other key interests regarding the details of the proposal. In cooperation with the San Joaquin River interests, we had intended to begin in mid-April a series of technical and policy meetings designed to discuss the proposal with others and to solicit comments for possible modifications. However, the first of these meetings was canceled largely due to concerns expressed by the environmental community. We believe that the proposal is based on sound analysis and concepts. At the same time, we recognize the value of exposing the proposal to critical comment before it is finalized. Certainly, the State Water Resources Control Board has an obligation to undertake a public process before it acts on the proposal.

Because we believe that there is substantial merit to the proposal, we intend to proceed with its development in cooperation with the broad based group of export and San Joaquin River interests which participated in its development. We sincerely hope that the environmental community and others will participate in this process so that we have a better chance of achieving the promise of the Accord in developing balanced, broadly supported solutions for the challenges in the Bay-Delta watershed.



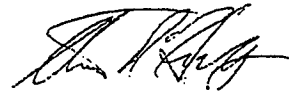
John R. Wodraska  
General Manager  
The Metropolitan Water District of  
Southern California



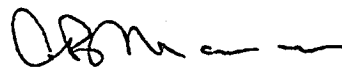
Thomas Clark  
General Manager  
Kern County Water Agency




Daniel Nelson  
Executive Director  
San Luis & Delta-Mendota Water Auth.



Thomas Hurlbutt  
Director  
Tulare Lake Basin Water Storage District



Anson Moran  
General Manager  
San Francisco Public Utilities Comm.



for Robert Smith  
Assistant General Manager  
Santa Clara Valley Water District



-4-

May 3, 1996

cc: Hon.Dianne Feinstein  
Hon. Barbara Boxer  
Hon. George Miller  
John Caffrey, Chair, SWRCB  
Carol Browner, Administrator, EPA  
Douglas Wheeler, Secretary, Resources Agency  
John Garamendi, DOI  
Roger Patterson, USBR  
M. Spear, USFWS  
W. White, USFWS  
L. Snow, CALFED Bay-Delta Program  
San Joaquin Tributaries Association  
San Joaquin River Exchange Contractors  
D. Moss, Friant Water Authority  
B. Buck, CUWA  
S. Macaulay, SWC  
J. Peltier, CVPWA



May 10, 1996

BY FACSIMILE AND REGULAR MAIL

John R. Wodraska  
General Manager  
The Metropolitan Water District  
of Southern California

Thomas Hurlbutt  
Director  
Tulare Lake Basin Water Storage Dist.

Thomas Clark  
General Manager  
Kern County Water Agency

Anson Moran  
General Manager  
San Francisco Public Utilities Comm.

Daniel Nelson  
Executive Director  
San Luis & Delta Mendota Water Auth.

Robert Smith  
Assistant General Manager  
Santa Clara Water District

**Re: Your proposal for implementation of the Bay-Delta Water Quality Control Plan  
as it pertains to San Joaquin River flows**

The three environmental signatories to the delta accord tender this response to your letter of May 3 to members of the Environmental Water Caucus. Others may reply separately to address other points.

We understand the following from your letter, and request your confirmation that we understand you correctly:

- You "are not proposing a change in the Vernalis flow requirement in the WQCP" and the doubts you profess about the underlying science you will address in the triennial review process.
- At the same time, we understand that you wish to propose only a partial implementation of that Vernalis flow requirement, ostensibly to shift some of the burden of compliance from the CVP and its contractors to the other San Joaquin water users and the State Water Project.

One interpretation is that you intend to ask the State Board to adopt your settlement proposal, as far as it goes, as part of an implementation program, but that you recognize and



acknowledge that the Board will have to supplement it with additional water rights requirements in order to fully implement the WQCP. We are unclear as to whether you quarrel with the proposition that the State Board must fully implement the WQCP to the extent of its powers and authority. We are also unclear as to whether you recognize that, if necessary to fully implement the Vernalis flow requirement of the WQCP, the State Board must go beyond the interim arrangement in the delta accord which relied upon compliance by the USBR utilizing New Melones storage.

Your agreement with this central proposition, which seems to us beyond serious cavil, would go a long way toward resolving the current dispute. The point is rather obvious: the accord committed the parties to recommend a consensus-based set of water quality standards to the State Board for promulgation. That has been done, and the State Board has now adopted, and EPA has approved, a WQCP. It is these standards that have the force and effect of law and that are incumbent upon the State Board to now implement through the exercise of its water rights and other authorities. In short, the accord's limitation on compliance with the Vernalis flow requirement does not apply to the water rights proceeding to which your proposal is addressed. If you agree with this proposition, we see no insurmountable impediment to a consensus involving all of the parties on partial implementation measures for the San Joaquin. If we disagree on this fundamental legal issue, we see no recourse but to seek resolution before the State Board and the reviewing courts. That would be most unfortunate. The repercussions for the CalFed process are obvious.

If we can agree that the State Board must adopt measures to implement the residual flow requirements on the San Joaquin, then we can turn to a more constructive dialogue on how that should be accomplished. We hope that that is the meaning of your point that "it is important to recognize that the proposed program is not intended to preclude other actions to improve fisheries and habitat in the San Joaquin River watershed, including additional purchases of water on a willing-seller basis and other appropriate action". Indeed, we are very open to discussing environmental water purchases<sup>1</sup> as a strategy for fully satisfying the Vernalis flow requirements, including the important issues regarding who would pay for the purchases of compliance water. We would be very interested in hearing your concept on that matter. It may not be realistic to assume that these costs will be absorbed by the CVP restoration fund or the public fisc. The first may not comport with emerging priorities, the second may not comport with political realities. Of course, in default of a consensus on a full implementation strategy for the San Joaquin, that matter must be determined by the State Board in its water right order.

Your letter offers dismissal of the SJTA litigation as an inducement. While that would be preferable, we regard the litigation as a trivial risk and minor annoyance. It is almost certainly a loser, and absent a preliminary injunction—a very remote possibility—at best, it will be a side show while the water rights proceeding goes on unaffected. History suggests that final resolution will

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<sup>1</sup> NHI has concrete suggestions on how this might be done, including where the water may be found.


take the better part of a decade, by which time the current WQCP will be superseded anyway. The real pertinence of the litigation to our dialogue is its opportunity costs. If half of what the petitioners are spending on lawyers were spent instead on investigating workable solutions to meeting the SJ environmental water needs, both the environment and your customers would be better off. Indeed, the only losers would be your law firms.

If you affirm our understanding of the substance of your letter, and if we do not have an irreconcilable legal dispute, we would suggest as a next step the convening of a three-way retreat to re-establish productive dialogue and prevent the current game of "chicken" from spinning out of control.

Finally, in the interest of keeping the record straight, we found your interpretations of the delta accord rather disingenuous in that several positions in your letter are contradicted by earlier statements from your agencies in court papers and elsewhere. Should you desire the particulars, we will be happy to present you with the "smoking guns". However, we would prefer to move beyond disputes over the meaning of the accord to something more constructive. Specifically, we wish to explore whether you and we can agree on the proposition that the SWRCB must implement the Vernalis flow standards in its WQCP and whether we can get down to business on the options for full implementation.

The courtesy of a prompt reply would be greatly appreciated.

Yours sincerely,



For the environmental signatories of the delta accord:

Thomas J. Graff and David Yargas for the Environmental Defense Fund  
Gary Bobker for the Bay Institute  
Gregory A. Thomas for the Natural Heritage Institute

cc: Hon. Diane Feinstein  
Hon. Barbara Boxer  
Hon. George Miller  
John Caffrey, Chair, SWRCB  
Carol Browner, Administrator, EPA  
Douglas Wheeler, Secretary, Resources Agency  
John Garimendi, DOI  
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M. Spear, USFWS  
W. White, USFWS  
L. Snow, CALFED Bay-Delta Program  
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San Joaquin River Exchange Contractors  
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J. Peltier, CVPWA





# SACRAMENTO - SAN JOAQUIN DELTA

